with that of six months on the first charge. In addition, the appellant's boat was forfeited to the state.

The defendant had been previously convicted of two offences of a similar character, although he was only aged 22 at the time of his last conviction. In 1984, he was convicted both of aiding and abetting a person to enter or leave Brunei in contravention of the Act, contrary to section 55(b), and of an offence against section 6(1) of the Immigration Act. These are equivalent to the two offences to which he pleaded guilty on this occasion. It must therefore be expected that he would not receive the same leniency as he would have done had he been a man of clear record.

The defence argued that the defendant would have been afforded a better opportunity to put forward facts as in mitigation if he had been represented at the trial. This may well be so, and is perhaps an argument for a wider representation of accused persons. On the other hand, it is not by itself a proper ground on which a sentence, which is in other respects proper, should be upset on appeal.

The magistrate was also criticized for wrongfully applying the guidelines which were provided by the Chief Justice in Revision Case No. 2478 of 1985 and others, when he observed that the normal penalty which ought to be imposed under the Immigration Act after a trial was not less than two years and a substantial fine, in the case of offences carrying a maximum of seven years, and different penalties for other offences under section 55 which are not relevant here.

Magistrates were told, of course, that although these were the usual sentences, it remained open to them to exercise their discretion to depart from this tariff in appropriate cases. Thus it was open to the magistrate to impose a sentence in excess of what was there suggested, and to impose the maximum penalty for the offence charged.

In this case the magistrate decided to impose a total sentence in excess of the minimum sentence that was recommended by the Chief Justice almost two years ago. I cannot say that he was wrong to do so, bearing in mind the fact that the appellant has a previous record for the same offence and of the continuing necessity to ensure that this offence is treated in Brunei Darussalam as one of great seriousness.

It may very well be that in other jurisdictions it is a lesser offence and that there is an argument which can be advanced, for what it is worth, that persons in Limbang maintain a personal relationship with those in Brunei Darussalam. Nevertheless, it is clear that the public interest is such that, notwithstanding what Rhind J. said in *Taib bin Gemok* v. *Public Prosecutor*,[1] the public interest does require that a sentence of imprisonment, sufficient to deter not only the accused but other persons of a like mind, shall be imposed in cases of this kind.

For all these reasons, I find it necessary to dismiss the appeal against sentence and to uphold the order which the magistrate made.

Appeal dismissed.

Solicitors: *Daud Ismail, Barry Sigar & Co.*

PUBLIC PROSECUTOR v. KHOO BAN HOCK & ORS.

[O.C.J. (Mortimer J.) 17 October 1987]

[Bandar Seri Begawan – Criminal Case No. 2904 of 1986]

Criminal Procedure – Jurisdiction – Whether court has jurisdiction to entertain charges of criminal conspiracy – Penal Code, ss. 2 & 120(A) – Criminal Procedure Code, s. 7.

Criminal Law – Criminal conspiracy offence – Ingredients of offence – Whether offence committed outside Brunei – Offence is a continuing one – Effect of – Penal Code, s. 120(A).

Criminal Law – Conspiracy to defraud – Whether an offence in Brunei – Penal Code, s. 43.

In this case, the accused were charged with, *inter alia*, the offence of criminal conspiracy. As preliminary points of law, counsel for the accused raised three main issues. They were:

(i) whether the court has jurisdiction to entertain the charges of criminal conspiracy;

(ii) whether the charge of conspiracy to defraud is an offence in Brunei;

(iii) whether it is unfair to the accused to have all the conspiracy charges tried together.

Counsel for the accused argued that with regard to the first issue, so far as the offence of criminal conspiracy was concerned, the gist of the offence lies in the agreement between the conspirators, and once an agreement is made, the offence of a criminal conspiracy is complete. It was submitted that it is the country where the conspiratorial agreement is entered into that determines the jurisdiction of the court and not the country in which acts pursuant to that conspiracy have taken place. Counsel contended that the prosecution cannot show that any offence of conspiracy was committed in Brunei.

Held: (1) the arguments of counsel and the authorities overlook the continuing nature of a conspiracy. They do not give weight to the possibility that although the parties may initially agree in country A to carry out offences in country B, the parties may be proved to be in agreement and agreeing in country B on appropriate evidence, and it may be shown that the offence was committed in country B;

(2) it is open to the prosecution to seek in relation to each of the accused, whatever he had done outside Brunei, that he was agreeing in Brunei with at least one other to do or to cause to be done an illegal act and that, therefore, he was committing the offence of criminal conspiracy in Brunei and this is so even if he had earlier agreed or was agreeing outside Brunei to do the act;

(3) so far as the second category of criminal conspiracy is concerned, it will be necessary for the prosecution to prove both that the accused was agreeing within the jurisdiction and that the overt act was committed within the jurisdiction;

(4) the niceties of the law of contract and commerce as to the making of agreements and the place of making the agreement is not always appropriate to be applied in the criminal law for these agreements which are concerned in conspiracies are illegal acts, and not agreements in relation to other branches of the law at all;

(5) there is no doubt whatsoever that the allegation of defrauding is a matter which furnishes ground for a civil action and that this is an offence which, as alleged, comes within the Penal Code;

(6) the charges cover different aspects of the prosecution case and allegations and they are properly joined and there is no injustice at present in their being joined.

Cases referred to:

(1) *Director of Public Prosecutions* v. *Doot* [1973] A.C. 807 (refd).
(2) *Hussain Umar* v. *Dalipsinghji* (1970) Cr.L.J. 9; A.I.R. 1970 S.C. 45 (refd).
(3) *R.* v. *Liyanage & Ors.* (1965) 67 N.L.R. 193; [1967] A.C. 259 (refd).
(4) *Seleem-ud-din* v. *The State* I.L.R. 1971 1 Delhi 432 (refd).
(5) *Gokaldas* v. *The Emperor* A.I.R. 1933 Sind. 333 (refd).
(6) *In re Dani* (1936) Cr. L.J. 634 (refd).
(7) *Abdul Karim* v. *The Emperor* A.I.R. 1929 Patna 640 (refd).
(8) *R.* v. *Pirtai* (1873) 10 B.H.C.R. 350-356 (refd).
(9) *The Emperor* v. *Pursumal & Ors.* (1938) Cr.L.J. 39 (refd).

HIGH COURT.

Colin Ross Munro Q.C. (*David Young* with him) for Khoo Ban Hock.

John Griffiths Q.C. (*Raymond Szeto* and *A. Tai* with him) for Andrew Peattie and Bernard Soo.

R. Palakrishnan (*Bikramjit* with him) for Azlan Robert Teo.

Michael Corkery Q.C. (*Stephen Llewellyn* with him) for the Public Prosecutor.

Mortimer J.: I have heard submissions by Mr. Ross Munro and Mr. Palakrishnan on behalf of their respective clients that I should quash the conspiracy charges against them on the grounds that the prosecution cannot establish that this court has jurisdiction to entertain those charges. These submissions depend in the particular circumstances of this case as to whether the prosecution can establish that these offences were committed within Brunei within the meaning of the Code.

In commendable attempts to clarify the issues and therefore to shorten the case, all counsel agree that I should hear and determine these submissions. In the course of them, I asked that counsel should agree on the particular factual basis upon which I should make my ruling, which was of course essentially a ruling of law. Counsel bent their efforts to this task and agreed certain propositions about the evidence available to the prosecution for the purposes of these submissions only. Having considered those propositions, it became clear to me that I could make no proper ruling upon the submissions without hearing evidence.

Insofar as it is for the prosecution to prove the facts upon which the jurisdiction of the court depends, these facts can be proved, of course, by both direct and indirect evidence expressed in the agreement as express evidence; especially in conspiracy cases, proof is often established by inference. Whether or not such inference is proper cannot be determined without me hearing the evidence. In these circumstances, it is premature and, indeed, improper for me to make a ruling upon those submissions as presented and I decline to do at this stage. The submissions that I should quash the charges are therefore rejected, without prejudice to the right of counsel for the accused to take the point again either at the end of the prosecution case or, indeed, at the conclusion of the whole of the evidence.

However, the detailed arguments upon the jurisdiction of the Brunei court are arguments which would in any event have been presented in the course of the case or may well have been presented, and I am asked by counsel to rule upon the arguments and, in particular, upon the proper construction of section 7 of the Criminal Procedure Code read together with section 2 of the Penal Code and section 120(A) of that Code, as they relate to the jurisdiction of the court.

Of course, I am prepared to assist in any way that I am properly able to do but no court can be asked to make a ruling in a vacuum. I am told that there will be an issue as to whether any agreement proved by the prosecution as the basis of a conspiracy was made within Brunei or without. The question raised is, what is the jurisdiction of the Brunei court if a conspiratorial agreement to do the matters complained of was first made between the conspirators outside Brunei, although later all the conspirators came to Brunei, and overt acts in pursuance of the agreement were carried out in Brunei. Improper though it is for a judge to be drawn into making rulings without evidence, it is permissible for counsel to ask a judge if he is prepared to indicate his likely view upon any particular matter. This is done to assist counsel in the presentation of their cases, for in this way counsel may be assisted in their task of identifying the true issues and presenting their cases economically upon those issues, for it is only when the issues can be accurately identified that the decision-making process can be effected efficiently, particularly in adversarial proceedings.

With this in mind, I am prepared to indicate a view upon the arguments that have been presented.

Mr. Ross Munro submits – and these submissions were adopted by Mr. Palakrishnan – first, that once the court's jurisdiction is challenged the court must satisfy itself that the offence has been committed within the jurisdiction and that the burden of showing this is on the prosecution. Now, there is no dispute that, of course, the court must satisfy itself that the offence has been committed within the jurisdiction and that can only be done on evidence, and the burden of showing that is undoubtedly on the prosecution, and there was no dispute about that. I may add, in case there is any doubt, that the buden of proof on the prosecution is the usual burden of proof, to prove, that I am sure, beyond reasonable doubt.

It is submitted secondly that this court only has jurisdiction if the offence was committed within Brunei – see section 7 of the Criminal Procedure Code. The reason why it is not necessary to consider the rest of that section is that it is agreed that each accused in this case is a foreign national.

It is submitted that the offence of criminal conspiracy is governed by section 120A of the Penal Code, which is identical to section 120 of the Indian Penal Code.

Then it is submitted that in order to ascertain the country in which the offence of criminal conspiracy was committed, it is necessary to construe section 7 of the Criminal Procedure Code together with section 120A of the Penal Code and if – and only if – the words of section 7 and section 120A are not clear, it is then permissible to look at authorities as an aid to construction.

It was then submitted by Mr. Ross Munro that if it is necessary to look at authorities, I should look first at the Brunei authorities if there are any, but it is agreed that researches of counsel have produced none; thereafter authorities of countries with identical or similar Penal Codes and Criminal Procedure Codes to Brunei, those countries being India, Malaysia and Singapore. It was finally submitted on that matter that English authorities are only of assistance if the words of the statute are not clear and there are no Brunei, Indian, Malaysian or Singaporean authorities.

Then it is submitted that on a proper construction of section 7, the offence is committed in the country in which the offence is complete or completed. In other words, the place where all the ingredients of the offence are first committed.

In the case of a criminal conspiracy, an offence under section 120A of the Penal Code, it is submitted that the gist of the offence lies in the agreement between the conspirators, and an agreement once made, the offence of a criminal conspiracy is complete. Therefore, it is argued and submitted that it is the country where the conspiratorial agreement is entered into that determines the jurisdiction of the court, and not the country in which acts pursuant to that conspiracy have taken place, and therefore it is submitted, in relation to the main submission which I have rejected, that the prosecution cannot show that any offence of conspiracy was committed in Brunei, the basis being that if it was first entered into outside the jurisdiction of the court, that was an end of the matter.

Criminal jurisdiction in Brunei is the creature of statute provided by the Penal Code and the Criminal Procedure Code. These together are a complete code of criminal law and procedure. In relation to the jurisdiction of the court, the rules follow the rules of international comity save for exceptional cases, and the jurisdiction of the Brunei court is territorial so far as the subjects of foreign nations are concerned. In order to determine whether the court has jurisdiction in this case, it is necessary to construe a number of provisions of the two Codes.

First, section 7 of the Criminal Procedure Code, which for the purposes of this case reads:

"Subject to the other provisions of this Code, the jurisdiction in criminal matters shall extend to offences committed within Brunei."

As I have perhaps indicated already, the researches of counsel have not found any other relevant provision.

Next, section 2 of the Penal Code, which reads:

"Every person shall be liable to punishment under this Code and not otherwise for every act contrary to the provisions thereof of which he shall be guilty within Brunei."

Thirdly, the section defining "criminal conspiracy" – section 120(A):

"When two or more persons agree to do or cause to be done an illegal act, such an agreement is designated a criminal conspiracy."

There is a proviso:

"Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such an agreement in pursuance thereof."

That section, in relation to the words "an illegal act", has to be read with section 43 of the Penal Code, which is a definition section, and the relevant part is:

"The word 'illegal' is applicable to everything which is an offence or which is prohibited by law ..."

And I emphasize:

"... or which furnishes grounds for a civil action."

Insofar as it may be relevant, I refer also to section 120(B) of the Penal Code, the second subsection:

"Whoever is a party to a criminal conspiracy, other than a criminal conspiracy to commit an offence punishable as aforesaid, shall be punished by imprisonment or restriction for six months."

I have mentioned that and now put it out of my mind; if it is submitted that that section relates to punishment only, I agree.

There is one other section it seems to me – or two other sections – to which I ought to make reference as relevant to the question of whether the Code is territorial in nature, and also in relation to conspiracy. It is the Penal Code section 121 which provides:

"Whoever wages war against His Majesty the Sultan, *etc.*"

and section 121(A) which reads:

"Whoever ..."

and I emphasize:

"Whoever within or without Brunei conspires to commit any of the offences punishable by section 121 shall be punished ..."

and so forth. I mentioned that section because I have it in mind in the course of the indication which I am to give.

It seems to me that the words of section 7 of the Criminal Procedure Code and section 2 of the Penal Code read together are plain. In their plain and ordinary meaning, the court has jurisdiction over offences alleged against a foreign national if the offence alleged is proved to have been committed within Brunei and not otherwise. In order to determine where the offence has been committed, it is necessary to consider the nature of the offence and its ingredients.

In order to make it clear, I think I have made a small error – in order to determine where and whether an offence has been committed, it is necessary to consider the nature of the offence alleged and its ingredients.

In this case of course, section 120(A) provides and defines the offence of criminal conspiracy. I ignore for the present the later submission that there is no offence of conspiracy to defraud known to the laws of Brunei.

Under section 120(A), there are two types of criminal conspiracy: the first is where the illegal act alleged is an offence and the second where it

is not. Where an offence is the illegal act alleged, the ingredients are – first, the prosecution must prove that two or more persons agree and, secondly, that they agree to do or cause to be done an offence.

With the proof of these elements, the offence of criminal conspiracy is complete and nothing further is required to bring the case home. Therefore when these have been proved, the offence has been committed. The essence of the offence is the agreement.

The second category of criminal conspiracy is where the illegal act is not an offence. When the prosecution seeks to prove that, there is the additional ingredient, and the prosecution must prove an act by one of the parties in pursuance of the agreement, and not until this act has been proved has the offence been committed.

Although a decision as to where an offence has been committed depends upon evidence as to what is done in that place, there can be no universal rule for determining the point – see Lord Wilberforce in *Director of Public Prosecutions* v. *Doot*[1] (at p. 817): "There is no mechanical answer."

I simply adopt the reasoning.

The decision as to where an offence has been committed, as I say, will depend upon evidence as to what is done in that place, although the physical presence of an accused may not be necessary to show that he has done something within the jurisdiction.

Section 120(A) is also drafted in plain ordinary language. It is clear on the plain and ordinary meaning of that language and on principle and on authority, although there is no authority in Brunei, that by its nature a criminal conspiracy within the section is a continuing offence from the time when two or more agree to the purpose until the time when they cease to agree. By this, I mean that all the ingredients of the offence will be present once the parties agree (the very gist of the offence) and the offence will have been committed, but it is not concluded. The offence continues to be committed as long as the parties continue to agree to carry out the plot.

Further, the parties may agree in one place and continue to agree in another, although this will depend on the evidence. Therefore, in order to prove the commission of the offence, it is necessary for the prosecution to prove that at the material time and, more importantly, for these purposes at the material place, the parties were agreeing to do the illegal act.

As to the nature of conspiracy, I do not find that it requires any authority to support the view that a criminal conspiracy is a continuing offence, but there is authority if it is sought and I refer without considering them further to the case of *Hussain Umar* v. *Dalipsinghji.*[2] Also, *R.* v. *Liyanage & Others*[3] a decision of the Supreme Court of Ceylon. I should have said that the case of *Hussain Umar*[2] was a decision of the Supreme Court in India.

And then there is the case of *Seleem-ud-din* v. *The State.*[4] That is the decision of an appellate court; and by way of persuasive authority there is *Director of Public Prosecutions* v. *Doot,*[1] the English case, in particular Lord Dilhorne at pp. 822F to 823B. In this respect, that is, that conspiracy is a continuing offence, a criminal conspiracy within the law of Brunei is the same as that offence is within the law of India and Ceylon and England. It is a close relative of the common law offence of conspiracy, upon which section 120(A) was undoubtedly founded.

Turning now to the particular point upon which my indication is sought, and it is in relation to the position if the parties or any of them first agree in relation to a criminal conspiracy outside Brunei and dealing with the position of the first category of offence under the section, so that the offence is complete in the sense that all the ingredients were first present outside the jurisdiction. If it is shown on the evidence that the parties have not agreed anything within Brunei, would that prevent the prosecution from seeking to prove by things done later within Brunei that the parties have committed the offence within Brunei, or is the offence to be regarded as complete outside Brunei, and that the court cannot take jurisdiction by reason of anything done later.

Mr. Ross Munro and Mr. Palakrishnan argued in principle and on the construction of the Code and they relied upon the line of Indian authorities to the effect that once the offence was complete, in other words committed, and the ingredients were completed there, that was the place where the agreement was made and that was the place where the offence was committed and that was the state or country which had jurisdiction over the offence, and no other. In support of this proposition, a

number of cases were cited: *Gokaldas* v. *The Emperor*[5]; In *re Dani*[6]; *Abdul Karim* v. *The Emperor*[7]; *Reg.* v. *Pirtai*[8]; *The Emperor* v. *Pursumal & Others.*[9] This is an impressive line of authorities which goes a little further because the line of authority has the support of the learned editor of *Ratanlal,* even in the twenty-third edition which is the 1987 Edition, at p. 394, where he treats *Gokaldas*[5] as being good law.

Armed with this authority and this support, Mr. Ross Munro and Mr. Palakrishnan mounted what I can only describe as a most attractive and persuasive argument for what may result in something strange or even absurd; but if I am persuaded that the law of Brunei is such, then of course I shall apply it.

I say the result could be strange or absurd because the result would be that if conspirators outside Brunei agree to commit offences within Brunei in breach of the Brunei Penal Code, and having made the agreement outside then carry out that agreement in Brunei, through others, or by coming here or giving orders which are effective here so that the effects of the offence are largely in Brunei and against Brunei interests, and the courts of Brunei do not have jurisdiction over such offences by reason of the fact that the parties were first agreeing outside Brunei, even if it can be proved that the parties were agreeing within Brunei when they were here within the meaning of the section, then indeed the result would be absurd.

If it is suggested that well of course, a substantive offences where possible; in international such a case within the jurisdiction without doubt: well, highly desirable that it is to charge substantive offences where possible; in international commercial crime it is often not possible or appropriate to do so.

However, I do not have, it seems to me, to rely upon the strange result of the argument, for those arguments and the authorities overlook the continuing nature of a conspiracy. They do not, it seems to me, give weight to the possibility that although the parties may initially agree in country A to carry out offences in country B, the parties may be proved to be in agreement and agreeing in country B on appropriate evidence, and it may be shown that the offence was committed in country B.

In my judgment therefore, it is open to the prosecution to seek in relation to each of the accused, whatever he had done outside Brunei, that he was agreeing in Brunei with at least one other to do or to cause to be done an illegal act and that, therefore, he was committing the offence of criminal conspiracy in Brunei, and this is so even if he had earlier agreed or was agreeing outside Brunei to do the act.

The same applies to other continuing offences; take harbouring as an example: If an accused harbours someone outside the jurisdiction and then brings that person within the jurisdiction, the harbouring continues and can be proved to have been done within the jurisdiction.

Of course, proof that any particular accused commits the offence in Brunei by agreeing here with at least one other depends entirely – upon the evidence – what he did and said, where he did these things, where he was, what was done and what was said on his behalf and where; it is only from those matters usually that agreeing can be proved. It is similar to evidence which is produced often to prove that the accused are acting in concert, from which of course their agreement can be inferred.

All this in the end may be a matter of fact and degree as I have said, to which there is no mechanical answer.

I will just add this, that so far as the second category of criminal conspiracy is concerned, it will be necessary for the prosecution to prove both that the accused were agreeing within the jurisdiction and that the overt act was committed within the jurisdiction.

I would also say this: that the niceties of the law of contract and commerce as to the making of agreements and the place of making the agreements is not always appropriate to be applied in the criminal law for these agreements which are concerned in conspiracies are illegal acts, and not agreements in relation to other branches of the law at all.

I hope from what I have said that I have given sufficient indication of my view; the detailed direction of law which it may be necessary for me to give myself at some stage of these proceedings will of course depend on the evidence, and the evidence that is given and accepted.

Let me turn now to the second submission that was made. It was submitted that so far as charge 1 is concerned, the conspiracy to defraud, this is an offence unknown to the law of Brunei. The basis of the argument is that if section 120(A) is considered, defrauding is not an offence known to Brunei law, it is not within the Code, and therefore this must be an agreement to do an illegal act, together with an act done in pursuance of it.

An answer to this submission lies, in my judgment, in the definition section, section 43, the definition of the word "illegal":

"The word 'illegal' is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action."

It is criticized because the words "which furnishes ground for a civil action" could be extraordinarily wide, but I must deal with the offence which is before the court and so far as this charge is concerned and drafted, I have no doubt whatsoever that the allegation of defrauding is a matter which furnishes ground for a civil action and that this is an offence which, as alleged, comes within the Code and I take the point that the essence of a conspiracy is the fact that a number of people joined together to carry out their illegal purpose. So I reject that submission.

Mr. Palakrishnan finally submits that it is unfair to the accused to try all these conspiracies together because they overlap – the allegations in some of them overlap with the other. Of course, when a conspiracy is charged the court has to be very jealous to ensure that no charges are made so as to put the defence into such difficulties because of their multiplicity of allegations that it becomes unfair to the defence; I will bear that in mind but so far as these offences are as charged now, these charges cover different aspects of the prosecution case and allegations and they are in my judgment properly joined and there is no injustice at present in their being joined although of course, it is open to counsel always to make submissions on these lines at any stage of the proceedings. I reject that submission as well.

Order accordingly.

Solicitors: *Bonds; Szeto & Co.; Palakrishnan & Partners; Clifford Chance; Bikram & Co.*

MALAYSIAN REPORTS

DIRECTOR-GENERAL OF INLAND REVENUE v. HARRISONS & CROSFIELD (M) SDN. BHD.

[S.C. (Seah, Hashim Yeop A. Sani & Syed Agil Barakbah S.C.JJ.) 9 March & 23 April 1988]

[Kuala Lumpur – Supreme Court Civil Appeal No. 34 of 1987]

Revenue Law – Additional remuneration scheme – Whether additional remuneration under the scheme is to be considered as bonus – Company paying senior staff monthly salary including additional remuneration under additional remuneration scheme – Liability to income tax – Deduction – Income Tax Act 1967, ss. 39.

In this case, the respondent company paid to its senior executives and managerial staff a monthly salary including additional remuneration under the additional remuneration scheme. The additional remuneration was based upon a percentage of the combined audited profits of the respondent company. The junior executives and non-managerial staff of the respondent company were not paid the additional remuneration but were paid a bonus at the discretion of the company. The Inland Revenue regarded the additional remuneration as bonus and disallowed deduction in excess of 2/12 of the employee's wages and salaries in respect of the additional remuneration. The respondent company appealed to the Special Commissioners of Income Tax and it contended that the additional remuneration paid to the senior executives is not bonus but should be regarded as either commission or deferred salary. The question before the Special Commissioners was therefore whether the payment of the additional remuneration under the additional remuneration scheme of the respondent company was bonus for the purposes of section 39(1)(h) of the Income Tax Act 1967. The Special Commissioners by a majority decided in favour of the Inland Revenue. On appeal to the High Court, Harun J. disagreed and allowed the appeal (see [1987] 2 M.L.J. 384). The appellant appealed.

Held, allowing the appeal: (1) to determine whether a payment is a bonus, we have to go behind the label and seek its true character;

(2) the question posed in this case is a narrow one, *i.e.* whether the additional remuneration is a bonus in character although it is called additional remuneration and not bonus. The answer is that it is a bonus and is caught by section 39(1)(h) of the Income Tax Act 1967.

Cases referred to:

(1) *Director-General of Inland Revenue* v. *Highlands Malaya Plantations* [1988] 2 M.L.J. 99 (folld).
(2) *Shelford* v. *Mosey* [1917] 1 K.B. 154 (refd).
(3) *Sutton* v. *Attorney-General* (1923) 39 T.L.R. 294 (refd).
(4) *Commissioners of Inland Revenue* v. *Wesleyan and General Assurance Society* 30 T.C. 11, 25 (refd).
(5) *Re Eddystone Marine Insurance Co.* [1893] 3 Ch. 9 (refd).
(6) *Great Western Garment Co.* v. *Minister of Inland Revenue* (1948) 1 D.L.R. 225 (refd).